

APPENDIX J**TAXI LICENSING AND ENFORCEMENT POLICY****1. Enforcement Policy Statement**

- 1.1** It is the policy of Swale Borough Council to ensure that taxi drivers and operators are licensed correctly and carry out their trade in accordance with the relevant law, the conditions attached to the licences and this policy.
- 1.2** This policy is intended to fairly and firmly enforce the law in a consistent and transparent way. The Council has adopted or is in agreement with the provisions of the Government's Enforcement Concordat. This is reflected in the Councils' Common Enforcement Policy which underpins all service or topic specific enforcement policies adopted by the council. This represents a graduated approach to enforcement based on the principles of:
- a) agreed standards and procedures
 - b) helpfulness
 - c) openness
 - d) transparency
 - e) proportionality
 - f) consistency
- 1.3** All enforcement action will be conducted in accordance with the Council's Enforcement Policy.
- 1.4** Authorised officers, when making enforcement decisions, will abide by this policy. Any departure from the policy must be exceptional, capable of justification, be fully considered and be endorsed by the Licensing Manager or above before the decision is taken (unless it is considered that there is significant risk to the public in delaying the decision).
- 1.5** Authorised officers must be fully acquainted with the requirements of the policy and appropriate training will be provided where required.
- 1.6** Officers will be authorised by the Resilience and Licensing Manager to take enforcement actions relevant and appropriate to their level of competence. Competency will be assessed individually by reference to qualifications and experience.

2 Enforcement Options

- 2.1** Achieving and maintaining a consistency of approach to making all decisions that concern taxi licensing and enforcement action, including prosecution, is of paramount importance. To achieve and maintain consistency, it is vital that the policy guidelines are always considered and followed where appropriate.
- 2.2** Licence application and enforcement decisions must always be consistent, balanced, proportionate and relate to common standards which ensure that the public is adequately protected. In reaching any decision many criteria must be considered including the:

- a) Seriousness of any offences;
- b) Driver, proprietor or Operator's past history;
- c) likely effectiveness of the various enforcement options;
- d) danger to the public.

2.3 Having considered all relevant information and evidence, the choices for action are:-

2.3.1 Licence Applications:

- a) grant licences subject to the Council's Hackney Carriage and Private Hire Licensing Policy requirements
- b) refuse to grant a licence.

2.3.2 Enforcement Action:

- a) no action;
- b) informal action;
- c) formal action
- d) use statutory notices, (stop notices etc.);
- e) suspend a licence;
- f) revoke a licence;
- g) use simple cautions;
- h) prosecute
- i) a combination of any of the above

2.4 This policy document provides detailed guidance applicable to the various options for enforcement action.

3. Informal Action

3.1 Such informal enforcement action may be appropriate in any of the following circumstances:

- a) the act or omission is not serious enough to warrant more formal action
- b) it can be reasonably expected that informal action will achieve compliance
- c) perhaps by taking into account the individual driver or operator's past history
- d) confidence in the operator's management is high
- e) the consequences of non-compliance will not pose a significant risk to the safety of the public

Even where some of the above criteria are not met, there may be circumstances in which informal action will be more effective than a formal approach.

3.2 Informal action to secure compliance with legislation includes offering advice, verbal and written warnings and requests for action and the use of letters.

4. Appearance before the relevant Committee of the Council

4.1 An offending individual or company may be summoned before the Licensing Sub Committee to answer allegations of breaches of relevant legislation, Bye-laws or conditions attached to licences or a contravention of this policy.

- 4.2** Current licence holders who report offence, conviction, prosecution, cautions or breach relevant legislation during the period of their licence may be brought before the Licensing Sub Committee.
- 4.3** The Committee may decide to take one or more of the following actions:-
- a) no action;
 - b) a written warning;
 - c) require the production of driving licences or other specified documentation at the Council's Office;
 - d) suspend a licence;
 - e) revoke a licence;
 - f) recommend prosecution action;
 - g) taking an additional driving standards test;
 - h) other appropriate action as deemed necessary

5 Section 68 Notices (Stop Notices)

- 5.1** An authorised officer may serve notice in writing for a hackney carriage or private hire vehicle or the taximeter affixed to such vehicle to be examined at the Council's appointed garage at a time specified in the notice. This notice must only be served having had due regard to the condition of the vehicle or with reasonable grounds to suspect the accuracy of the taximeter.
- 5.2** An authorised officer may, in addition to requiring the vehicle to be tested, suspend the vehicle licence until such time as he is satisfied with the condition of the hackney carriage or private hire vehicle. This action will only be taken when he has reasonable grounds to suspect that the condition of the vehicle is an immediate danger to passenger and/or other road users.
- 5.3** The suspension notice will remain in place until such time as the Officer issuing the notice is satisfied that the grounds for suspension have been satisfactorily resolved. Written confirmation of the lifting of the suspension notice will be given. Until such time as written confirmation has been received, the suspension notification will remain active.
- 5.4** If the Authorised Officer who issued the suspension notice is not satisfied that the appropriate action has been taken to allow the suspension notice to be withdrawn within a period of two months from the date of issue, the vehicle licence shall be deemed to be revoked.

6 Appeals

- 6.1** Appeals against decisions of the Licensing Sub Committee or authorised officers may in appropriate circumstances be made to the Magistrates' Court.
- 6.2** Any notifications of enforcement actions will include written information on how to appeal. Where the Council suspends or revokes a driver's licence the revocation or suspension may take place immediately where relevant legislation allows, regardless of the fact that the driver may have made an appeal against the decision to the Magistrates' Court.

6.3 A driver can also appeal against a refusal to renew his drivers licence, but as his previous licence would have already expired he cannot continue to drive as he would no longer hold a current licence.

7 Prosecution

7.1 The decision to prosecute is a very significant one as it may impact on the licence holder's future employability. Prosecution will, in general, be restricted to those circumstances where the law is blatantly disregarded, legitimate requirements of the Council are not followed and / or the public is put at serious risk. Such circumstances are, however, in a minority. It is important that the criteria on which a decision to prosecute is made provide common standards which ensure a consistent approach.

7.2 The circumstances which are likely to warrant prosecution may be characterised by one or more of the following:

- a) where there is a blatant disregard for the law, particularly where the economic advantages of breaking the law are substantial and the law-abiding are placed at a disadvantage to those who disregard it;
- b) when there appears to have been reckless disregard for the safety of passengers or other road users;
- c) where there have been repeated breaches of legal requirements;
- d) where a particular type of offence is prevalent;
- e) where a particular contravention has caused serious public alarm.

7.3 When circumstances have been identified which may warrant a prosecution, all relevant evidence and information must be considered, to enable a consistent, fair and objective decision to be made.

7.4 Before referring a matter to the Legal Section for possible prosecution, the Licensing Manager as well as an authorised officer must be satisfied that there is relevant, admissible, substantial and reliable evidence that an offence has been committed by an identifiable person or company. There must be a realistic prospect of conviction; a bare prima facie case is not enough. With insufficient evidence to prosecute, the issue of a simple caution is not an alternative.

7.5 In addition to being satisfied that there is sufficient evidence to provide realistic prospect of conviction, it must be established that it is in the public interest to prosecute. The Code for Crown Prosecutors (seventh or any subsequent edition), issued by the Crown Prosecution Service, provides guidance which will be considered, including relevant public interest criteria

7.6 When a decision is being taken on whether to prosecute, the factors to be considered may include:-

- a) the seriousness of the alleged offence;
- b) the risk or harm to the public;
- c) identifiable victims;
- d) failure to comply with a statutory notice served for a significant breach of legislation;
- e) disregard of safety for financial reward;
- f) the previous history of the party concerned;
- g) offences following a history of similar offences;

- h) failure to respond positively to past warnings;
- i) the ability of any important witnesses and their willingness to cooperate;
- j) the willingness of the party to prevent a recurrence of the problem;
- k) the probable public benefit of a prosecution and the importance of the case e.g. whether it might establish a legal precedent. (As indicated above, advice on the public interest is contained in the code for Crown Prosecutors. The general thrust of the advice contained therein is that, the graver the offence, the less likelihood there will be that the public interest will allow anything other than a prosecution);
- l) whether other action, such as issuing a simple caution in accordance with the Home Office Circular 016/2008 would be a more appropriate or effective.

8 Simple Cautions

8.1 A simple caution may be used as an alternative to a prosecution in certain circumstances.

8.2 The purposes of the simple caution are:-

- a) to deal quickly and simply with less serious offences;
- b) to divert less serious offences away from the Courts;
- c) to reduce the chances of repeat offences

8.3 To safeguard the suspected offender's interests, the following conditions should be fulfilled before a caution is administered:-

- a) there must be evidence of the suspected offender's guilt sufficient to give a realistic prospect of conviction;
- b) the suspected offender must admit the offence;
- c) the suspected offender must understand the significance of a simple caution and give informed consent to being cautioned.

8.4 If there is insufficient evidence to consider taking a prosecution, then by implication, the criteria is not satisfied for the use of a simple caution. A simple caution should also not be used where the suspected offender does not make a clear and reliable admission of the offence. (It should be noted that there is no legal obligation for any person to accept the offer of a simple caution and no pressure should be applied to the person to accept a caution).

8.5 Where a person declines the offer of a simple caution, it will be necessary to consider taking alternative enforcement action. Whilst this will usually mean prosecution, this is not necessarily inevitable. For example, it may be considered that a written warning would be appropriate.

9 Transparency

9.1 Following the completion of an investigation into a complaint or any enforcement activity, the licence holder will be informed of the action intended to be taken.

9.2 Any written documentation issued or sent will:-

- a) contain all the information necessary to understand the offence and what needs to be done to rectify it. Where works are required, the period allowed for them to be completed will be indicated;

- b) indicate the legislation or conditions contravened and measures which will enable compliance with the legal requirements and point out, where appropriate, that other means of achieving the same effect may be chosen; and
- c) clearly indicate any recommendations of good practice under an appropriate heading, to show that they are not a legal requirement.

9.3 The clear distinction between legal requirements and matters which are recommended as good practice recommendations in all enforcement action, even if only giving verbal advice, is vitally important.